RAJKUMAR LAW LECTURES.

BEING

ELEMENTARY LECTURES ON LEADING

LEGAL MAXIMS

ADDRESSED

TO THE SENIOR STUDENTS OF THE

RAJKUMAR COLLEGE, RAJKOTE,

BY

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LIEUT.-COLONEL J. M. HUNTER, I.S.C.,

POLITICAL AGENT IN KATHIAWAR

—: AND :—

VICE-PRESIDENT OF THE COUNCIL OF GOVERNORS

OF THE RAJKUMAR COLLEGE,

BY THE AUTHOR

IN

RECOGNITION OF HIS WARM INTEREST IN THAT INSTITUTION

AND HIS CONSTANT LABOURS TO PROMOTE ITS BEST INTERESTS.

PREFACE.

THE subject of law was introduced into the curriculum of the Rajkumar College some years ago, as being not only a useful and instructive branch of study but especially necessary for the class of students who receive their training in that institution and who in many cases have to administer the law in later life. Mr. Whitworth, I. C. S. when holding the post of Judicial Assistant to the Political Agent in Kathiawar, delivered a series of lectures in the College on the elementary portions of the Indian Penal Code and the Criminal Procedure Code, which were afterwards published in book form. The lectures here given to the public were intended as a sequel to Mr. Whitworth's, and have been brought out with the advice and assistance of Mr. C. W. Waddington, the Principal of the College. There are many books, notably one by Mr. Broom, in which the subjects here discussed are very ably treated ; but the discussion is often too elaborate and abstruse for those for whom this little book is primarily intended. The writer has endeavoured to avoid all niceties of law, and to restrict himself as far as

possible to the broad and ordinary uses of the maxims which are discussed. He hopes that a simple and clear exposition of the elementary principles which are the very basis of law may be useful in equipping the young Kumars in some measure for the duties which will devolve upon them either in the sphere of a ruling Chief or of a Bhayat. He ventures also to hope that the book may be found to repay perusal by Chiefs and others who have not made law a special subject of study.

I take this opportunity of offering my sincere thanks to Mr. C. W. Waddington for the assistance he has given me.

GULAM MOHAMED MUNSHI.

RAJKOTE, *15th April 1899.*

CONTENTS.

Mr. MUNSHI'S LAW LECTURES.

LIKE SOCRATES, MR. MUNSHI has come to the conclusion that sayings most often quoted are among those least understood and he is now publishing a series of explanatory lectures delivered at the Rajkumar College. He modestly expresses the hope that not only his original audience but the public may derive benefit from them. He very rightly makes the maxim 'Public welfare is the highest law' the subject of his first lecture. Like its companions it is well written and contains a fund of aphorisms, which will, it is to be hoped, leave an impression on the young Chiefs who listened. MR. MUNSHI repeats the old fable of the stomach and the members and explains how the levy of taxes can alone be justified. Each subject is born a creditor to the extent of the protection he is entitled to, a debtor to the extent of the fealty and allegiance which he owes the sovereign. MR. MUNSHI asks the Chiefs not to lose sight of their relations with their subjects and to see for themselves that there are no unnecessary and harrassing taxes and that no fresh ones are levied unless imperatively necessary.

To the ordinary reader MR. MUNSHI'S two lectures on the rights of the king will probably prove most intere

subjection to God and the law for the law makes the king" and "The king can do no wrong." The author has made no attempt to reconcile the two maxims and indeed the task would have been difficult ; they originated in two different schools of jurisprudence and their conflict caused in England two revolutions, cost one English king his life and another his crown and reduced England for 140 years to the condition of a Venetian Oligarchy.

Mr. Munshi has found parallels to the first maxim in Manu. It would be interesting to know how for Manu's Code obtained the force of law. "Where a common man would be fined one Karshápáná the king shall be fined one thousand" is declared by Manu to be a settled rule. But whether the king ever paid the fine is not disclosed ; and I am afraid the subject who tried to levy it learnt to what an inconvenient extent precept may differ from practice. I notice too that Manu says that the king who heeds not the law will sink low after death. A threat of punishment in a future world generally betrays inability to exact satisfaction in this.

Of 'The king can do no wrong' Mr. Munshi has not attempted to explain the origin. It will be found, I think, in the divine descent of the ancient rulers. The tribe of which he was the head invariably claimed to be sprung from the loins of some god or demon of whom the Chief continued to be the incarnation. In the brain lodged the ancestor's supreme wisdom, in the

right hand his power. The Homeric kings are of god like appearance, give divine judgments and triumph alike in the field and in the Council. One of the most detested of seigneurial rights arose from the wish to continually renew throughout the tribe the blood of the original founder. The supernatural prestige of the Chief was long maintained by his being better fed and better equipped than his subjects. A mounted knight in full armour could make great havoc among a mob of half-starved naked infantry. Duke Rollo the invader of Normandy killed Frenchmen with a light-hearted ease that was the envy of his army,

'He accompanied every blow
with a shout of Ha! or Ho!
and he always clove his foe
To the waist!'

Bruce cut Sir Henry Bohun almost in two. At the sight of Edward I's angry face a priest fell dead of terror.

In later years the maxim became a convenient excuse for the removal of an objectionable minister. It was always easy to prove that wrong had been done. The king could not have done it. The minister was tried for it. It was the easier to convict him because he was estopped from proving that he was not guilty. He was impeached and ceased from troubling. The maxim is not yet obsolete. Her Majesty sits in Council as the Highest Appellate Court. Her decision is given

and must *ex hypothesi* be correct. The parties have then exhausted their legal remedies and litigation must cease. The result obtained by a fiction is highly beneficial. It is curious to note that the claim for papal infallibility rests on a not dissimilar basis. The Popes have, it is true, never claimed a divine origin but they claim a divine guidance in their judgment. The end obtained is identical. By the aid of the spiritual assistance promised to the successors of St. Peter, the Pope *ex cathedra* is on points of faith and doctrine qualified to give an infallible decision. Thereafter the question becomes a *res judicata* and cannot be re-opened.

In Lecture V MR. MUNSHI has dealt with the *'Benefit of the Doubt.'* This saying is more often misused in the sense opposite to that explained. Sheltered behind this plea a weak Judge will often acquit to avoid responsibility. It should be remembered that the doubt which justifies an acquittal must be as scientific as the proof which justifies a conviction. The judge must exclude from his mind all bias or report favourable to the prisoner. The doubt must be one that fairly arises from discrepancies or improbabilities in the evidence recorded by the Court.

With these few remarks I commend MR. MUNSHI's book to his future readers.

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(I. C. S., and Judicial Assistant to the
Political Agent, Kathiawad).

LEGAL MAXIMS.

LECTURE I.

Public welfare is the highest law.

THIS maxim means that the welfare of the general public ought to be the main object of law. Law demands that the conduct of individual Members of a Society should be such as will lead to the general happiness of the Society, and consequently expects personal sacrifices when necessary. When an individual lives as a member of a constituted Society, he derives a number of advantages which he would not enjoy, if he did not belong to it. For instance a man living in Bombay has not to engage sepoys to guard his person or property. He moves about freely without any fear of being assaulted. But if he were living in a savage country where there is no constituted society, as in some parts of Africa, he would have to engage men for his protection. This protection is given to him by the Police of Bombay. The State which employs the police, is a body which represents the public it governs. Thus a man who lives in a society derives a number of advantages afforded by its working and constitution. Therefore it is necessary that he should try to keep it up and promote it. If in discharging this duty he has to make any sacrifice or suffer any inconvenience it is only fair

that he should do so. For instance it is necessary for the good of the society that it should have railways. In making a rail road, it may be necessary to take up land belonging to a private individual or to remove his house. If so, he is bound to give up what is required for the purpose, even if he does not wish to part with it for any other consideration. He must look to the great benefit the public will derive and not to his personal gratification. In short every person ought to strive to add to the happiness of the general public. I will give you an apt illustration from the animal world. In the human body there are several members, such as the heart, the liver, and the stomach. Each of these has special functions to perform. The stomach digests the food we eat. In doing so the stomach does not directly add to its own power, but helps in forming blood for the general system, which in its turn keeps the machinery of the stomach in order. If the stomach were to refuse to do its share of work, it would not immediately suffer, but in the end it would inevitably be ruined. In the same way every individual member of a Society should act in such a manner as to add to its happiness, in order that he may, in the end, secure his own. This may be expressed in another way viz. that the best principle of action is the greatest good of the greatest number. Every member of a Society implicitly accepts this principle by the very fact of his being a member. Consequently he agrees that under certain circumstances his property and liberty shall be given up for the public good. If a large fire be raging in a

town, and if there be a fear of its extending, the pulling down of an intermediate house with a view to check the progress of the fire, is permitted by law. If the public road be impassable, the public has a right to go over the adjoining private land so far as it may be necessary.

On this principle the laws are made by the legislature. The punishment of persons who offend against the laws of the country which are made for the happiness of its inhabitants is also an exercise of this power. They are deprived of their liberty and put in jail because their freedom is injurious to the interests of the rest of the society.

Compulsory service as jurors is also an illustration of this. The duty which is laid on private individuals in certain offences to give information of their commission and to help the police, without any remuneration for it, is another illustration. The duty of giving evidence in a case is also based on the same principle.

The taxes and duties (such as income tax, and customs duty) which are levied from the public by a State are justified on the same ground. To give protection to person and property, the State has to incur the expense of maintaining a police force and Law Courts; it has also to maintain an army to defend them against outside aggression. All this is done in the interests of the

which he can use for his personal gratification; nor are his subjects his slaves whose earnings he can take away in part or wholly for his own use. As the head of the State he has grave responsibilities, and one of them is to spend the money of the public for their benefit alone. The heads of all civilized States take a fixed and reasonable annual amount for their expenses. Her Majesty the Queen Empress receives a fixed amount every year. Beyond that she does not take a farthing of the money collected from the public. Several oriental princes, for instance, Aurangzeb and Akbar, are known to have strictly observed this principle.

A man is entitled to keep and enjoy all he earns. So the exaction of taxes and duties is in a manner a violation of that principle. It is justified only on the ground that it is necessary for the welfare of the public. As it is a violation of the rights of property, it is only just and proper that it should not be resorted to unless

it is unavoidable, that is only such taxes and duties should be levied as may be quite necessary for the continuance and efficient management of the society. In British India this power is vested only in the Viceroy with the sanction of the Secretary of State for India. In the same manner, in the Native States, the Chief ought to see for himself that there are no unnecessary and harassing taxes, and that no fresh ones are levied unless imperatively necessary.

LECTURE II.

Act indicates intention.

THIS maxim is very frequently applied in Criminal law. Intention is an important element of crimes. Generally speaking unless there is a guilty intention, there is no crime. One man may kill another. To find out whether he is guilty or not, and if he is guilty, of what offence, we have to look to his intention, that is, with what intention he committed the act which resulted in the death of the other. But intention is not a thing material. We can judge of it only by looking into the natural and probable consequences which result from the act. For instance, if a man fires a gun in a crowd, it must be with the intention of injuring a person in that crowd; because the man firing must have known that the bullet he discharges in the crowd would of course injure one or more persons. This result is the *natural and probable* consequence of the act of firing in a crowd. He cannot say with any reason that he did not intend it when he fired his gun. So we can safely presume that he intended it. But suppose that the crowd was a marriage procession and that some persons in it were carrying torches for light, and suppose that in the fright caused by the firing of the gun in that crowd, the torch-bearers fled in confusion and accidentally set fire to an adjoining house. This fire

cannot be said to be a natural and probable consequence of the act of firing a gun, and therefore the man who fired would not be criminally responsible for it. In short, a man is presumed to have intended the *immediate, natural, and probable* consequenees only of his act, and not the remote or accidental.

In judging of intention from an act, we reverse the natural order of things. The natural order is reversed, because intention precedes the act. Here we, however, consider the result of the act and from it conclude what intention the man had in doing the act. We should therefore look carefully into all the surrounding circumstances before we come to a conclusion on the point.

LECTURE III.

Unless there be a guilty mind, there is no crime.

GENERALLY speaking this maxim is true. In most offences, it is only if the act be done with a guilty mind, that it becomes a crime. For instance, X might give Y some medicine, thinking it to be the proper one, but if it be poison and if Y dies of it, X would not be guilty of homicide, because he did not intend to give poison. It was merely an accident. Unless a man does an act with a guilty mind, it is not proper to punish him. Guilty mind would be presumed, if a man voluntarily does an act which is generally believed to be wrong.

But there are certain acts which the law positively forbids, and the guilty mind is not a necessary element therein. Any one who does an act of that sort, would be punished even if he had no guilty mind. Kidnapping is an offence of this class.

The Indian Penal Code is so framed as to leave no doubt as to whether the guilty mind is a necessary element in an offence or not. The definition of each crime distinctly states whether any and what intention or knowledge is a necessary element of that offence. It uses such words as voluntarily, dishonestly, fraudulently etc. which are also defined. So there is not much

difficulty in finding out whether a particular act amounts to an offence or not.

Mere intention to commit an offence, however clear, is not punishable in law. For the law deals with acts and not with bare intentions. It is certainly wrong to have an evil intention. It shows an evil mind and bad morals. But Courts of law are not Courts of morality. Unless a man has actually done something, the interests of the Society at large are not materially affected, and consequently the law declines to take notice of mere thoughts. Similarly mere preparation for committing an offence is not punishable. A man may buy poison with the intention of poisoning some one, but that does not make him guilty. Who knows that he would not have changed his mind and not tried at all to use that poison for the purpose? As long as no actual attempt to commit an offence has been made, there is time to withdraw and repent of the evil intention. Law takes this possibility into consideration and does not make bare intention or preparation punishable.

Attempt is a stage in the commission of an offence, which is beyond intention and preparation. Here a man does some act which is next to the actual commission of the offence and which ends in it; for instance, putting poison in the cup of another person. In this case the offender has done a thing by which the intended mischief has so far advanced that it is practically beyond his control to check it, and so he is liable to punishment.

The Indian Penal Code punishes an attempt to commit an offenoe, even though the circumstances be such that the substantive offence could not have been committed. For instance if A attempts to pick the pocket of B, A is guilty even if there be nothing in B's pocket to steal.

LECTURE IV.

Presumption of Innocence.

"PRESUMPTION of innocence" means that in criminal cases the accused must be considered innocent, until and unless evidence has been produced to prove him guilty. The reason of this rule is that generally the great majority of mankind get through life without committing any crime, and therefore those who assert that a particular person has committed a crime, are making a statement which is exceptional, if it be true. The presumption should always be in conformity with the rule and not with the exception. In conformity with this principle, the innocence of an accused person is, at first, presumed. One result of this rule is that the accused is not bound to make any statement or to offer any explanation of circumstances which create mere suspicion against him, but do not prove his guilt. The prosecution is bound in the first instance to bring conclusive evidence to prove his guilt, and if any link in the chain of its evidence is missing, it cannot call upon the acoused to supply it. The evidence of the prosecution must be such as would get rid of every fair presumption of the innocence of the accused.

LECTURE V.

Benefit of doubt.

THERE is a maxim of law that the benefit of doubt must be given to the accused. It means that if the facts before the Court are capable of two interpretations, one that the accused is innocent and the other that he is guilty, the interpretation in favour of the accused must be accepted. Before a man can be convicted and punished, the law requires that his guilt shall be proved conclusively and beyond all reasonable doubt. In a Criminal case, there is no conflict of interests. The prosecution does not and ought not to aim at getting the accused convicted at any cost. It is the duty of the prosecution to place all facts before the Court without any bias It is in the interests of justice that if the accused is guilty, he should be punished, but it is not in the interests of justice that he should be convicted and punished, though not guilty. The anxiety of justice not to convict an innocent person is well conveyed in the maxim, "It is better that ten guilty persons should escape, than that one innocent man should be convicted." It means that, if on account of want of evidence, there is any doubt about the guilt of the person accused of a crime, the judge must be so very careful about convicting him that if in

his anxiety not to punish an innocent man, he lets off ten guilty persons, it does not matter much; justice demands that he should not convict even one innocent man.

LECTURE VI.

No man shall be condemned unheard.

THIS rule has universal application in all Courts of law. It is based on the plainest principles of justice. Before a man is deprived of his liberty or property, or made to suffer any punishment for an offence alleged to have been committed by him, it is only fair that he should be given an opportunity of refuting the allegations made against him. Similarly, before a a decree be passed by a Civil Court against a person, he should be given an opportunity to put forward and prove his version of the case. A judge who claims to be just, will not pass judgment against any one without hearing him. It is essential that the accused should be heard, because there are always two sides to a question. In criminal matters, it may be that the wrong person has been accused of a crime; it may be that the witnesses have made a mistake in their belief as to what he did. There are numerous ways in which a mistake may be committed. The proper person to expose such mistakes is the man who will suffer by them. No trial could be considered fair if the accused was not present or was not heard.

It is necessary not only in judicial matters, that every man should be heard before he is condemned, but even in political and social matters it is only fair

out hearing what he has to say. An unfavourable opinion is a loss to the character of the man, and good character is more precious than the treasures of the world. So it is only fair that before we condemn a man socially for a social offence we should give him an opportunity to explain. For instance, if I am told that a friend of mine is false to me, I ought not to believe it at once, but am bound, in fairness to him and myself, to try to get an explanation from him of the facts advanced to prove his unfaithfulness. If I fail to do this and believe the allegations, it is possible that I may afterwards find them to be the result of an intrigue planned to alienate me from my friend. In short, in every walk of life, it is very necessary not to be hasty in coming to a decision and not to think ill of any one without hearing him. The practice of condemning a man unheard, socially or politically, is one of the most fruitful sources of intrigues in the Courts of Chiefs, and gives the intriguers a good opportunity of maligning others without fear of being detected. It is equally unfair to the victim and prejudicial to the interests of the Chief and his State.

LECTURE VII.

Necessity is a good excuse with respect to private rights.

THERE is a common saying that necessity has no law, which means that under the stress of necessity you may do an act which would otherwise be considered illegal. It is true in certain cases only. We shall first consider it with respect to the rights of private individuals, as apart from those of the State or the Government. You have learnt that where public interest is at stake, private interest must give way. So the privilege accruing from necessity is very limited where the State or the Government is concerned, as you will see later on.

The necessity of which I speak here must constitute a real and unavoidable necessity, and not what a weak-minded person might consider as such. Such a necessity may arise in the exercise of the instinct of self-preservation, or by an act of God or of a stranger. For instance, two persons may be shipwrecked and may find themselves on the same plank, which may not be able to support them both ; one may knock the other over to save himself. If the person knocked over be drowned, it is yet no offence, for the act was done under sheer necessity and in the exercise of an instinct which rules supreme in the whole animal world. If the legislature were to attempt to make a rule contrary to this law of nature, it would meet with disappointment. Again if

a heavily loaded ship is overtaken by a storm, and it becomes necessary to lighten her to save the lives of the passengers on board, it is not wrong to throw overboard a part of the cargo.

As to necessity arising from an act of God, suppose a painter undertakes to paint and deliver a picture within a fixed time, but dies before he finishes it. His heirs are not responsible for the non-performance of the contract. If a man goes mad, and during madness kills any one, he is not responsible for it.

The privilege of necessity resulting from an act of God or State, is provided for in many Gujrati deeds by the words આસમાની સુલતાની. *Asmáni* means heavenly, that is, of God, and *Sultáni* means of a Sultan, that is, of a King. This expression is used in the proviso, that if the contract is broken through the interference of God or King, (a condition over which the promisor has no control,) the promisor is not responsible, and the breach of contract is excusable.

Sometimes necessity arises through the action of a third person. For instance, one person may threaten and force another to do some wrong, or may confine him in a house and oblige him to sign a document. In such cases the general rule is that if the agent (that is the person acting) is not a free agent and is forced to act against his own will, the law excuses him. But any and every compulsion or threat would not make a crime or failure in duty excusable. For instance, if

A threatens B, that if B does not rob X, A will beat him, and if B then robs X, he will not be excused, for the danger to B is not such as the law considers adequate to justify B's committing the offence. The rule is that ¶f there be a threat of *instant death*, and if the person threatened be in serious apprehension of it, then and then alone, the law excuses the person who pleads compulsion. If the danger be of some *future* injury (even amounting to death) or if there be time to have recourse to the protection of the law, the excuse will not be considered sufficient. Again no threat, not even of instant death, would excuse a man for committing murder or an offence against the State punishable with death. The reason is that if a man has to choose between losing his own life and taking anybody else's, it is only proper that he should prefer to die an innocent man to taking the life of another in order to save his own.

As regards the higher offences against the State, you know that the State represents the whole society, and therefore an offence against the State might strike at the very root of the society. You also know the maxim "The public welfare is the highest law." Consequently serious offences against the State are under no circumstances excused.

Thus one rule is that *under no circumstances*, higher offences against the State, or murder, are excusable; another rule is that nothing short of a serious threat of *instant death* would be considered a sufficient

for other crimes. Threat of grievous hurt or any other hurt is not a sufficient excuse under any circumstances. This principle is laid down in Section 94 of the Indian Penal Code. By way of illustration, I may mention that giving false evidence under pressure of the police, or bribing a public servant because the latter used oppression would not be considered sufficient excuse in Law. The law inculcates and tries to infuse a spirit of high moral conduct.

Again no order from a master to his servant, or from a parent to a child would excuse the commission of an offence. If a police foujdar were to order his subordinate to beat a person who has been arrested for an offence in order to induce him to confess, and if he (the subordinate) were to do so, he would not be excused. For no one is in duty bound to obey an order to commit a crime. By accepting service, a servant is not absolved from the duty of judging right and wrong for himself, and is as much responsible for his own actions as he would be, if he were an independent man. If the master's order were to be considered a sufficient excuse for committing crimes or doing immoral things, many servants would take advantage of that rule and would do wrong to please their masters, which would be highly injurious to society.

The right of private defence of person and property which the law gives a man, is also based on the same principle of necessity. If a man were to come to beat me or rob me, it is only natural that I should try to

defend myself or my property, and should use force for the purpose, if necessary. The right of private defence allowed by law is in keeping with this law of nature. In the exercise of this right, a person is allowed to cause death or any other injury proportionate to the magnitude of the danger to himself or his property. The rule is that if there be an *immediate* danger of personal injury to a person, he is at liberty to cause such injury to the other party as may be reasonably necessary to prevent that injury. This right continues only so long as the danger lasts. For instance, if A runs at B with a drawn sword in his hand and in a threatening attitude, and if B is really afraid that he will be mortally wounded by A, he (B) has a right to kill A even before the latter actually attacks him. But suppose that A, seeing B prepared to defend himself, turns back and runs away, and B follows him and kills him, he (B) will not be excused, for the act was not necessary for private defence.

n crimes relating to property such as robbery, house-breaking, etc. stated in Sections 103 and 104 of the Indian Penal Code, the right to kill or cause other injury is given with certain restrictions specified in those Sections. This is what is called the right of private defence of property.

The subject of the right of private defence is rather complicated, and nice questions of law and fact often arise in it. Sections 93 to 106 of the Indian Penal Code deal with this subject.

To sum up, you must remember that before necessity can be accepted as a valid excuse for a crime or breach of contract, it must be a real and unavoidable necessity arising from circumstances over which he who claims the privilege had no control ; that the right of private defence extends to causing such injury as is absolutely necessary to prevent the threatened injury; it begins as soon as there is a reasonable danger of injury, and lasts so long as the necessity for defence lasts. No order from a master or parent or superior officer can excuse the commission of a crime. You must also remember that as individual interests have to give way to public interests, no plea of necessity can excuse the commission of higher offences against the State, or of murder.

LECTURE VIII.

There is no wrong without remedy.

THIS maxim means that if a man suffers any wrong, the law gives him redress for it. Wrong here means injury resulting from the violation of a right or from a breach of duty. The right and duty must be such as are recognised by law. So the word injury here does not mean any harm or loss, but such harm or loss only as is recognised by law. For instance, suppose that A has a shop in the Sudder Bazar here and B sets up another shop just opposite A's and undersells him. This will cause A some loss; but it is not an injury in the legal sense. A has no legal right to prevent another from opening a shop near his, or from selling his own articles at any price he likes, so it is not a violation of *a legal right*, and consequently it cannot be said to have caused any injury. Or suppose that A digs a well in his land which adjoins B's, who has also a well in his land, and that water from B's well goes to A's by an underground current: this will cause B some damage, but no injury. This sort of damage is called "damage without injury."

But suppose that a manufacturer of bicycles invents a new sort of machine and obtains a patent for it, that is, the sole right from Government to make it. Then if any other manufacturer makes similar bicycles for

sale, it will cause the patentee a loss which can be termed injury, as it is caused by a violation of the sole right to manufacture the kind of machine. Similarly if the law imposes a duty upon a person, and that person neglects it, the consequent loss will be termed injury.

The term injury does not necessarily mean pecuniary loss; loss of any sort, which can be valued or not, resulting from a breach of legal duty or violation of a legal right is called injury. If a person has a right to vote in an election and if he is not allowed to do so, it is an injury to him, *for he is prevented from exercising his legal right.* Whenever an act done would be evidence against the existence of a right, that is an injury to the right and it is actionable. "It is a vain thing to imagine a right without a remedy; for want of right and want of remedy are reciprocal." Even if the person for whom he wanted to vote be elected, and consequently the loss of his vote makes no practical difference in the result, or causes no damage, still as it is an interference with the exercise of a legal right, the law treats it as an injury. Thus though there be no pecuniary loss, yet the violation of a legal right imports damage, in law. If the law were to require that only those injuries which are capable of being valued in money should be redressed, several rights and duties would be violated with impunity and would be rendered worthless.

If any wrong (that is, injury) is caused to a person, he has a right to get redress, that is he can go to the

injured person, his remedy is by a civil suit by which he gets pecuniary compensation. But if the wrong be of a criminal nature, that is wherein the interests of the public at large are also concerned, he has to go to a criminal Court, where generally punishment is awarded to the wrong doer and sometimes compensation is also given to the person wronged. Here again you see how the leading principle of law, 'that where the interests of the public are at stake, private interests must give way,' is made applicable, and the injured party has to go to a criminal court, and cannot sue civilly or compromise the case. For instance, if A has stolen X's property and is subsequently caught, X must go to a criminal Court to get him punished. He would not be allowed to drop the prosecution even if A were to offer to make good the loss.

LECTURE IX.

No man shall be vexed twice for one and the same cause.

THIS maxim means that if a man has been once before a Court in either a civil or a criminal matter and if the Court has decided it, he shall not be troubled again in the same matter, that is no Court shall again allow proceedings to be taken against him in the same matter. The rule is commonly known as "Res Judicata." If you will think a little about it, you will see that it is based on a wise policy and that it is necessary for the good of society.

The public welfare requires that there should be as little litigation as possible with due regard to the demands of justice. It is only to obtain justice, that litigation is allowed. When what is considered justice by the established courts, has been dealt out to the parties in a matter, it is proper that there should be an end to that dispute. If either party were allowed subsequently to re-open the matter and to have recourse to a Court of law again, there would be no end to litigation, and life and property would not be secure. The result would be that society would suffer. For instance suppose that A files a suit in a Court against X for the possession of a village, and the Court decides it in favour of X, and that A fails in appeal too, or does not appeal at all. If this decision were not considered final

and if A were given a right to sue X again for the same village, then X's right in the village would ever remain uncertain, there being a possible chance of the decision going against him on a fresh suit. This uncertainty would lessen the value of the property; it would also keep X in constant suspense. Such a condition would be very prejudicial to the interests of society, so the law very wisely forbids it. It says that when a matter has been brought before a competent Court, and has been decided after a proper hearing, it shall not be re-opened. It is understood that the matter in dispute in the second suit would be the same as in the first, and between the same parties, or their representatives. This rule then prohibits a second proceeding in the same matter and between the same parties (or their representatives) after it has been directly *heard and decided by a competent Court of law.*

Following this rule, a man who has been acquitted or discharged in a criminal case, cannot be tried again for the same offence, so long as the order of acquittal or discharge stands. You must understand that the proceedings which are known as appeal, review, and revision are not exceptions to the rule of *Res judicata.* When an inferior Court has decided a matter against a person, the latter may, if he feels dissatisfied, go to a superior Court to get that decision set aside. This action is called "appeal." It is not a new trial, but a subsequent stage of the same case which has been heard by a subordinate Court. The Appellant would

not be allowed to recall his old witnesses or to bring new ones before the Appellate Court. It is necessary in the interests of justice to allow appeal in important matters, as there is a chance of the lower Court's making a mistake and deciding wrongly, however learned and honest its judge may be. The Appellate Court is presided over by a better trained judge or judges, so that if there has been any mistake in the decision of the lower court there is every probability of its being rectified here. The Appellate Court takes into consideration the evidence produced in the lower court by the parties, hears the arguments for and against the decision of the lower Court, and then gives its decision, which is final. The right of appeal is allowed only in important matters; in some cases two appeals are allowed. The civil and criminal procedure codes contain rules for appeals by which one can easily ascertain whether there is an appeal in a particular matter or not.

Where a decision is appealable there is some uncertainty about its finality. It may be set aside in appeal. If no limit of time were fixed, the aggrieved person might not file an appeal for a long time, and might thus keep the opposite party in suspense. So to put a limit to this uncertainty, the law fixes a period within which the aggrieved party must file his appeal. If he fails to do so, he loses his right and the decision of the court becomes permanently final.

Review means the proceeding by which the Court which has passed a decision, reconsiders it, at the

request of a party, with a view to correct mistakes in it if there be any. This is allowed in very exceptional cases only. There is a period fixed also for making an application for Review.

Revision means a proceeding by which a superior Court calls for a case from a lower Court to see whether any injustice has been done. It is allowed only in cases where there is no regular appeal and on very exceptional grounds. Appeal, Review, and Revision are thus not exceptions to the rule of *Res judicata*, as they are proceedings in the same case, but at later stage.

LECTURE X.

No man shall take advantage of his own wrong.

THE meaning of this maxim is quite clear. Its reasonableness and necessity are also evident. If a man were allowed to derive benefit from his own wrong, it would be encouraging wrong-doing. For instance, if a man who has acquired some property by robbery were allowed to keep it for himself or his family, many would be tempted to acquire property in that way. Similarly, suppose that a man gets drunk, and during intoxication commits some offence. If such intoxication were accepted as a good excuse for the offence, it would be giving him advantage of his own wrong; for it was certainly wrong in him to get drunk. And if this excuse were accepted, many other people would purposely get drunk before committing a crime, so that they might escape punishment. From these illustrations, you will see that it is quite necessary to have this maxim and to apply it strictly in the interests of society.

The principle is that no man ought to do wrong; and if anyone does wrong, he cannot be allowed to reap any benefit from it. The benefit here referred to is of two kinds; it may be (1) some actual pecuniary gain or (2) freedom from criminal or civil liability arising from the wrong. Speaking generally a man commits wrong when he acts against the law. The violation of

law may be either of a civil or a criminal nature. This maxim applies in both cases. If you break a contract or act against the terms of your deed, you will not be allowed to gain by it. Or if you act against a law which imposes a duty, you will be held responsible for the consequences of your act. I will give you a few illustrations in which this maxim has been or could be applied, to enable you to understand it better.

If a man agrees to give his daughter in marriage to a person, but before she is married to him, he gets her married to another man, the first suitor can at once sue him for damages, for he has broken the contract. Similarly if a railway company employs as engine-driver a man who is not qualified as such, and there is an accident through his incompetence, the company will be held responsible for the loss occasioned by it.

Again if you make a person believe that a certain state of things exists and if that person acts upon that belief, you cannot be allowed to say subsequently that that state of things did not exist. For instance, if A by his words or conduct makes B believe that he is a member of a certain firm, though he is not, and if B under that belief deals with that firm, then if the firm becomes insolvent, A will be responsible to B for any loss suffered by B from such insolvency. Similarly, if a person is sued under a wrong name and allows the mistake to go uncorrected, and a decree is obtained against him under that name, he cannot subsequently say that he is not liable for the decree because his real

name is not in it. This is known as "estoppel" in law, that is, a person is "estopped" from denying a certain state of circumstances and liabilities arising therefrom. The principle is that the author of wrong, who has put another in a position in which he had no right to put him, shall not take advantage of his own illegal act, or in other words, shall not avail himself of his own wrong.

You must remember that there are two conditions precedent to the application of this rule of estoppel. One, that there must be such a false representation by word, or act, or omission, as would lead a reasonable man to believe it to be true, and the other that the person deceived *must have acted upon such belief.*

It is not necessary for the application of the maxim we are discussing that there should be any *mala fides* in the wrong-doer. Even if the wrong-doer has no dishonest intention, he will still be responsible for the wrong, if he is under any duty or liability to the injured person.

LECTURE XI.

Fraud vitiates everything.

It will be convenient to discuss here soon after the last maxim, (no man shall take advantage of his own wrong) the two following maxims which deal with a similar subject. These maxims are (1) "Fraud vitiates everything;" (2) "A cause of action cannot arise out of fraud."

A man who commits fraud certainly does wrong and consequently cannot be allowed to reap any benefit from it. Fraud is an aggravated form of wrong. It includes every kind of craft or machination dishonestly employed for the purpose of deception or cheating. The law lays down that no valid contract can arise out of a fraud. For instance, if a merchant were to pass off paste as real diamonds and then sue for the price of such an article, he would be non-suited, even if the purchaser had expressly agreed to pay a high price, believing the stones to be genuine. The contract is based on fraud and so no court of law will help in carrying it out. The principle is that "no polluted hand shall touch the pure fountain of justice." In this case the seller comes with impure hands because he has designedly committed a fraud. The contempt of a court of law for fraud is so great that not only will it refuse to help in carrying out a fraudulent contract, but it will even set

aside its own solemn decision, if it be found to have been based on fraud. Its anxiety to defeat fraud is so great that there is no period of limitation for a fraudulent transaction, that is, no lapse of time is allowed to legalize a fraudulent transaction, and the period of limitation does not begin to run till the defrauded person becomes aware of the fraud practised on him or has good means of knowing it. The period does not run even against the accessory or representative of the person who commits fraud. But a stranger who did not directly or indirectly take part in the fraud would not be affected by it, because he is just as innocent as the defrauded person and so the latter cannot claim any privilege against him.

As instances of the application of these maxims, I may state that in a case, where a property was sold in execution of a decree, the sale, although it had been confirmed by the Court, was nevertheless set aside subsequently, because it was proved to have been brought about by the fraud of a party to it. Again in a case where the plaintiff was designedly brought up by the defendant in the belief that he was an illegitimate son and consequently not entitled to the property of his father, the period of limitation was held not to have commenced against him, till he became aware of this fraud. This exemption is embodied in section 8 of the Indian Limitation Act of 1877.

LECTURE XII.

Ignorance of law is no excuse.

THIS maxims means that if a man who has committed an illegal act pleads that he did not know the law, his excuse will not be accepted. For instance, if a man imports into British India opium or arms from a country beyond British India without a proper license, and when prosecuted for doing so, says he did not know that it was illegal, this excuse, even if it be true, will be of no avail. He will be convicted just the same as if he knew the prohibition, and wrongly acted against it.* It is necessary in the interests of society that this knowledge of law should be presumed. If it were otherwise, many of those brought up before a Court of law would rightly or wrongly set up the plea of their ignorance as a way of escaping the consequences of their acts. Then it would be necessary for the Court to take the evidence of both sides on the point, which would take up a great deal of the Court's time. Besides, such a proceeding would give rise to perjury, and the task of the Judge to come to a right conclusion would be rendered very difficult.

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*His ignorance of the law, if *bona fide*, would be a reasonable ground for punishing him lightly. But punishment and conviction are two different things.

Again as laws are made for the benefit of the community, it is necessary that the members of the community should know the laws and act up to them, so as to derive from them the maximum amount of good. It is right therefore that the knowledge of law should be a *sine qua non* of the membership of the community. In order to facilitate the acquisition of this general knowledge of law, when acts are passed by the Government, they are printed and published in the Government Gazettes in English and the Vernacular, and time is always allowed before an act is enforced.

This maxim applies in all the divisions of law, civil, criminal, &c. But wisely, it is not carried too far by applying it even to cases wherein there is a doubtful point of law. For instance, if certain relatives of a deceased person are doubtful as to their individual legal rights in the property of the deceased, and if, to avoid a lawsuit, they come to an amicable arrangement as to the distribution of the property, it will be upheld, though the very basis of it is the ignorance of the law applicable to their case. It would not be set aside even if a person who was a party to it were to object to it.

It will be convenient to refer here to a corresponding maxim viz. "Ignorance of fact is a good excuse." It means that if a person does an act under a *bona fide* mistake of fact, the law will not punish him or hold him responsible for the consequences of his act. In criminal law, committing a crime under a mistake of fact practically means that the person intended to do a

lawful act but did an unlawful one. This shows that there was not that conjunction between the deed and the will which is necessary to form a criminal act. If a man takes a wrong medicine by mistake and poisons himself, he cannot be charged with attempting to commit suicide. Similarly if a man intending to kill a house-breaker who has entered his house at night and under circumstances which would justify him in so doing, by mistake kills a servant or a relative, he will not be punished for it ; it is no crime.

In many crimes, a particular intention is an important element. Intention depends a great deal upon the state of mind of the person acting, while the state of mind in its turn depends sometimes on what the man knows or believes he knows about the surrounding circumstances. For instance, to constitute the offence of the theft it is necessary that, something should be removed with the dishonest intention of depriving the owner of it. But if the person believed that the thing belonged to him, he cannot be said to have had a dishonest intention. Here the state of mind was honest ; he was acting under a mistake of fact, and so he is not guilty of theft.

In some cases mixed questions of law and fact arise, which require a keen discrimination and sound judgment to come to a right conclusion. Sections 76 and 79 of the Indian Penal Code lay down the law as regards mistakes of fact and law.

In civil matters also a mistake of fact is considered a good excuse. If A pays B a sum of money believ-

ing him to be C's Agent, to whom he owes the money, and if B is not really the Agent, A can recover the money from B. Or if in settling an account between A and B there is a mistake in the figures, and A pays more than he ought for that reason, A can subsequently sue B for the excess paid and recover it. But if a person knowing all the facts, chooses to pay a certain sum, he cannot recover any of it, if the man to whom he pays has committed no fraud, and it is not against good conscience for him to retain it. For instance if I once pay a merchant his bill, I cannot subsequently recover from him a portion of it on the ground that his rates were very exorbitant.

These maxims apply to foreigners as they do to the natives of the country. It is true that the foreigners cannot be presumed to know the law of the country in which they may be temporarily residing. But since they enjoy the benefits of the law and order of the country, it is only proper that they should be burdened with the responsibilities which the laws impose.

LECTURE XIII.

No man can be judge in his own case.

THE fairness of this rule is obvious. It is necessary in the interests of justice, that not only shall the judge be impartial, but that there shall not be even a breath of suspicion about his impartiality. If a judge does not command that degree of respect, he is not fit to be a judge.

It cannot be expected that one who is a party in a case will be an unbiased judge of it, even though he be a fair-minded person. His knowledge of the facts of the case and his personal and private estimate of the merits of the evidence of his side, formed *ex parte*, are sure to influence him, even if he is the most upright man in the world. When an opinion has once been formed, it tends to become stronger with the lapse of time, and is difficult to alter, even though it may be wrong. Therefore it is not safe, that a man who is a party in a case should also be the judge in it. This disqualification applies equally, if the judge, though not an actual party, has the least personal and private interest in the case. For instance, a share-holder of a company is disqualified by law from sitting in judgment in a case in which the company is a party.

Following the same principle, a king, though he is the dispenser of justice, cannot according to English

law personally undertake to decide a case wherein he is directly interested. It is on the same principle that the Rajasthanik Court of Kathiawar was established to decide a certain class of cases in which the chief is an interested party. There is another class of cases, between the Chief and his Jivaidars, Inamdars or others, in which also he is directly interested. In such cases, if the Chief values his reputation as an impartial dispenser of justice, he will appoint for their decision an independent person in whose impartiality his subjects may have confidence.

In short, the maxim means that where a person has the least personal interest in a case he should not have a voice in its decision. He cannot sit even as a member of a bench which has to decide it. On similar grounds, his presence in the Court, at the time when the case is being heard, is also objectionable, if it is likely to influence the judge. The fountain of justice must be as pure as possible, and nothing likely to pollute that fountain must be permitted near it. Nothing is more necessary for the welfare of the public than that it should have a firm belief in the purity of its Courts of law.

LECTURE XIV.

Enjoy your own property in such a manner as not to injure that of another.

The principle involved in this maxim is obviously fair and essential to the peace and well-being of the community. If such a restriction were not placed upon the enjoyment of property, evil-minded persons would harass others with impunity and there would be no security of person or property in the community. This maxim is another instance of the principle you have learnt that where the interests of the community are at stake, individual interests must give way.

Generally speaking a man is the absolute owner of his property and may do with it what he likes. But if this liberty of action were unrestricted, it would sometimes cause injury to others. Consequently in the interests of the community at large, it is very necessary to put certain restrictions on this liberty. The principal limitation is that a man should so use his property as not to injure others, in other words, so long as he does not injure others, he can do what he likes with his own.

I will give you a simple instance of the necessity and fairness of this rule. If A has a house in a barren plot of ground far from a town, and if he sets fire to it, nobody can object, for it is his property and he can do what he likes with it. But if this house of A's is next

to B's and A sets it on fire, it is clearly a wrongful act, because B's house is in danger of being burnt also. Again a man might make his house a depot of the filth of the town, which would constitute a great nuisance to his neighbours. Consequently the law rightly puts restrictions over the otherwise unquestionable right of the owner to deal with his property as he likes.

This rule applies not only to immoveable property but also to moveable property and to all persons. None should behave in such a way as to cause injury to others. If an action be criminal, the doer will, of course, be punished. But even if it is not criminal, but only such that it causes injury of a civil nature, as understood in law, he will be responsible in damages.

This maxim has been applied in the following cases.

If a man pulls down his house, he is bound to take such precautions that his neighbour's house does not suffer any damage through his negligence in that operation. If he digs an excavation in his ground, it should not be so close to the land or building of his neighbour as to cause the latter to fall.

If a man builds a house, he should not obstruct the ancient lights and windows of his neighbour's house; nor should he put his eaves over the premises of his neighbour; nor should he let his new drains run into his neighbour's ground.

No man should so use the water of a river as to injure its quality or materially diminish its quantity, for the use of other proprietors residing along the banks of that river.

Again if a man keeps any dangerous and inflammable articles he is bound to take good care that he does not injure others through them; storing kerosine or gun powder, or grass in large quantities is considered dangerous.

Similarly if a man keeps a wild animal or an animal which he knows to be vicious, he is bound to take care that it does not get loose and injure any one. Every one has a right to keep domestic animals such as dogs or horses. But no one can do so to the injury of others. Therefore if any such animal is vicious and the owner knows it, he is bound to take special care that it does not injure any one.

If a man has a reservoir or a pond on his land, he is bound to take good care that the water in it does not break out and injure the property of others, or that it does not stink.

You will see from these illustrations that when a man chooses to own property which is in any way dangerous, he is under a corresponding duty to look after it more carefully so as to prevent injury to others. He keeps it of his own free will, so he must undertake a corresponding responsibility. From this you will see that the fundamental principle of law is the more rights,

or the greater liberty, you enjoy, the greater are your responsibilities. It is therefore that the king, who has more liberty and power than his subjects, has more responsibilities on his shoulders than any one else in his kingdom. A ruler who simply enjoys the rights and privileges of his superior position and does not discharge its duties is the most culpable of men, and betrays that he has not received an adequate moral training

LECTURE XV.

Law helps those who are vigilant and not those who are indolent.

THIS maxim means that when a person applies to a Court of law for redress, he must show that he has not been indifferent, but has been watchful of his interests like a man of business. The rule of *caveat emptor** is based on a broad principle underlying this maxim. The statutes or acts of limitation are also based on this principle. A statute of limitation means a statute which prescribes periods within which suits, appeals, and applications must be filed in a Court of law, and which lays down rules governing that branch of law. There are various kinds of suits, such as suits for debt due, for redeeming mortgaged property, for trespass, for damages for an injury, etc. The Limitation Act prescribes periods within which these suits must be filed after the cause of action has arisen. It also lays down rules regarding questions which might arise when calculating the period of limitation in particular cases. If a man fails to bring his suit within the period prescribed by this act, what does it show? It shows that he is careless about his right and is not anxious to recover it. If he comes after the fixed period, the Court of law will tell him that as he was not

*"*caveat emptor*" means "let the purchaser beware." This maxim is explained fully in a subsequent lecture.

vigilant about his right, it will not now help him and will dismiss his suit. If there were no law of limitation, it would be difficult for different Courts in a State to fix a uniform standard of limitation. It is quite probable that two Courts might allow two different periods for the same sort of suits. This would create great dissatisfaction and hardship. Therefore the period of limitation is prescribed by law in all countries.

Some persons look at the law of limitation with an eye of disapprobation. They think that a man should be allowed to enforce his right after any lapse of time, and that a debtor should not be allowed to plead any excuse for being relieved of his liability. They say that a plea of limitation savours of fraud or immorality. But this is not a proper view of the matter. When a man claims a right, he has to prove it by evidence; so also the opponent has to prove his freedom from the liability claimed. But evidence disappears in course of time. Witnesses may die, or may forget many important incidents. If the claimant were allowed to put forward his claim after any length of time, he would be deriving a benefit from his indolence, by the disappearance of the opponent's evidence, and the Courts would also have great difficulty in coming to a satisfactory conclusion. Again at the end of a long period, a debtor's condition may have greatly changed for the worse, and it would be very hard to make him pay a very old standing debt under such circumstances. It would be still harder to make a son pay a very old standing debt

incurred by his father. Besides if a creditor does not demand his debt in good time after it is due, it raises a presumption that either it has been paid up, or that he has released the debtor from it, or that it makes no difference to him whether it is paid or not. If under such circumstances the creditor allows the whole period of limitation to pass and does not file his suit, he can not very well complain of the hardship of the law, if his suit is subsequently dismissed.

In short, the law of limitation is based on the sound policy involved in the maxim we are now considering, and also on the wise rule that there should be as little uncertainty as possible about the rights and liabilities of persons. If a man has held possession for, say, 60 or 70 years, of a piece of land and has subsequently sold it, the buyer cannot be blamed if he believes him to be the owner. If another person were to turn up after that long period and claim the land, and if his suit were allowed, the uncertainty of title even after a long possession would hang about every property and would seriously interfere with its due enjoyment and use. So the law of limitation is said to be a statute of repose, that is, it removes uncertainty and settles doubts about rights and titles. The Law of prescription and easement is also based on this maxim.

We find a parallel to this legal maxim in the lay maxim "God helps those who help themselves." It teaches us to be up and active in all our affairs. Acti-

vity is one of the essential conditions of the well-being of a community, and therefore indolence should be hated and avoided. Law always enjoins that which is good for the society, and the maxim "Law helps those who are vigilant and not those who are indolent" finds a place in law books, because it tends to produce qualities which are necessary for the well-being of the people.

LECTURE XVI.

Caveat Emptor.

Let the purchaser beware.

THIS maxim means that a purchaser is bound to inquire diligently as to the title and other particulars of the property he is about to buy, and that if he fails to do so or does not inquire properly, he has to suffer the consequences, that is, he has to keep the property with all its defects. If a man buys a house from another thinking him to be the owner, but does not inquire about his rights in, and title to, the property, and if it subsequently turns out that he was simply a life-tenant, the purchaser has to keep it with that defect. The law expects every man to be vigilant in his affairs, and requires a purchaser to make full inquiry about the property he is going to buy. If he fails to do so, the law will not help him. But if he makes such inquiry and the seller fraudulently conceals something which he is bound to communicate, and which the buyer cannot otherwise find out, the sale will be set aside. For instance, if on inquiry about title-deeds, the vendor says that they have been burnt and assures the purchaser that there are no encumbrances on the property, and if subsequently it turns out that these statements were falsely made by the vendor, the sale will be set aside.

But if the purchaser makes inquiries as to the *condition* of the building he wants to buy and if the

vendor makes a false statement, the sale will not be set aside, because the vendee could have got full information about the condition of the property by getting it examined. This is not a matter the knowledge of which is confined to the vendor alone. It is within the reach of the vendee, and if he fails to obtain it, he must suffer for his negligence and foliy. Here he is not vigilant but credulous and indolent.

If a false statement made by a principal is sufficient in law to set the sale aside, it will also be sufficient, if it is made by an agent with or without the authority or knowledge of the principal. If it were otherwise, many would engage ignorant and reckless agents and derive benefit from their own wrong.

But if the vendor has not deceived the vendee, the latter cannot set the sale aside, whatever defects there may be in the property. The reason is that the purchaser buys the right, title, and interest of the seller, whatever it be, and he is bound to inquire and see what is put up for sale. The seller cannot give more than what he himself possesses and the bargain is for what he possesses. So in the absence of fraud, the purchaser buys with all the defects and liabilities of the seller. For instance, if A buys a house from B, thinking that B is the absolute owner of the land on which the house stands, but if subsequently it turns out that B was merely a lease-holder, or tenant at will of the land, A cannot set the sale aside, if B did not deliberately mislead A.

But if the vendee specially agrees to transfer the property with good title and free from all incumbrances, then the maxim has no application. The vendee undertakes a special liability by a special agreement, and therefore the purchaser is free from all responsibility.

This rule of "*Caveat emptor*" applies also in the case of the sale of moveable property such as goods and animals. But these being different in their nature from immoveable property, it is applied differently. Generally where a buyer buys a specific article the maxim has full application, but where he orders goods to be supplied for a specific purpose and trusts to the judgment of the seller to select goods which shall be fit for the purpose for which they are ordered, there is an implied warranty on the part of the seller that they shall be reasonably fit for that purpose. The *seller* is responsible on account of this warranty, and if it is broken, he will have to pay damages. In this case, the maxim has no application. To give you an illustration, if I order a bicycle of a particular maker and of a particular brand and measurement, from a firm in Bombay, the firm is not responsible for anything except for sending me the particular kind of cycle I have ordered. If after its arrival, it breaks or is too big for me or has any other defect, I cannot return it. The maxim "*Caveat emptor*" applies here. Before I undertook to select the article and ordered a particular make, I ought to have inquired and known all about it. If I am careless, I must suffer and not the firm. But if instead of sending such an

order, I were to write to the firm, giving them my height and my weight, and desire them to send me the best cycle available, and if they were to send me one too big or too small for me, or if it were so frail as to break on an ordinary trial, the firm would be responsible for the damage. Here I left the selection to the firm, and they undertook the responsibility of that selection, and so are liable for the mistake they have made. Here the maxim could have no application, as will be evident to you.

If an article is ordered by sample, the seller is bound to see that what he sends is similar to that sample. There is no further warranty.

If a fraud has been committed by the seller and if but for that fraud, the contract of sale would not have been entered into, the contract is vitiated, and the maxim has no application. The rule is that fraud vitiates every kind of contract.

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I have stated above that no man can give a better title or greater rights than he himself has. In accordance with this principle, a thief cannot give a good title to stolen property to one who buys it from him, as he himself has no title to it. The buyer in his turn cannot give a subsequent purchaser a better title than his own. So the original owner has a right to follow the stolen article and get it back from whoever has got it. There are only a few exceptions to this rule. One is the case of currency notes. If a thief has stolen a

currency note and passed it on to others, in lieu of money, the original owner cannot recover it. The reason why generally a purchaser is not allowed to acquire a good title in a stolen article is that if it were otherwise, many would buy stolen property without making proper inquiry, which would be an encouragement to thieves. Again to give thieves the legal power of effecting a change in property against the will of the true owner is to recognize and favour crime. No one should be permitted to derive any benefit from a crime, even if he gets mixed up with it innocently or accidentally.

To sum up, ordinarily the purchaser buys at his own risk, there being no warranty about title, quality, etc. He is bound to make every inquiry and if he fails to do so, he must suffer for it. If the buyer inquires from the seller about any particulars which are specially within the knowledge of the seller, and if the latter deceives the buyer in this matter and if the buyer enters into the contract through this deception, the sale will be set aside. But in matters which are patent or about which everybody can get information by due diligence, there is no duty on the seller to give any information.

As regards moveable property, if the buyer orders a specific article, leaving no choice to the seller, there is no warranty ; but if it be otherwise, there is generally a warranty that the article sold will be useful for the

purpose in view. If an article is ordered by sample, the only warranty is that it will answer that description.

No seller can, as a rule, give the buyer a better title to the property sold than he has himself.

LECTURE XVII.

He has a better title who is first in point of time.

THIS maxim means that if other conditions be equal, he who is first in time has a better title. To give you a very common illustration, the man who gets into a railway carriage first has a right to take any seat he chooses; another coming in subsequently cannot deprive him of it; for though both have equal rights, he who comes first has the first choice. The same is the case in a theatre or a lecture hall, unless the seats are reserved.

Coming to the proper field of law, if a man finds land of which there is no owner, or occupant, he has a right to take it and can become its owner. In primitive times when there was no settled government and when the population was small, land had no practical value. Every one occupied as much land as he wanted. This possession made him the owner in course of time. But in a country where there is a settled government, you would not find any land without an owner. It is only in a barbarous, unoccupied, or unsettled country that this maxim will have application as regards the occupation of land.

Similarly, wild animals such as tigers, panthers etc., which move about in a jungle, are nobody's property,

and whoever can take them is their owner. They continue to be his property as long as they are in his actual or constructive possession. But if they once escape and regain their original liberty, anybody who catches them becomes their owner, and the former owner has no right to them. Deer and other wild animals and birds in a park or fish in a tank continue to be the property of the owner of the park or tank so long as they are in it. But if they escape, he loses his property in them. With tame animals, it is different, because they always have an owner and he does not lose his ownership in them by their straying away, for they are likely to return ; ownership in them does not cease until they definitely revert to their wild mode of living.

The law of inheritance by primogeniture is another illustration of the same rule.

In cases of mortgage, without possession, one who is a mortgagee of a prior date has ordinarily a superior claim to recover his full amount in preference to and before one whose mortgage is of a subsequent date. For instance, if A mortgages his house to B for Rs. 5000 and subsequently to C for Rs. 3000 and does not give any one possession of it, C will have no right to recover his Rs. 3000 from the sale of the house, until B has had his Rs. 5,000. Similarly if A contracts to sell his property to B and receives a portion of the

purchase money, but does not deliver it to B and subsequently contracts to sell the same property to C, B's right to it is better, being prior in time.

This better title through priority in time is obtained only when *all other conditions are equal* and the law does not expressly enjoin to the contrary. In the case of two mortgages, one with possession and one without it, the conditions are not equal, and therefore this maxim has no application.

The law of registration contains some provisions which have reference to this maxim. According to this law, some deeds are compulsorily required to be registered and in some registration is optional. In transactions of the former class, priority of time would be of no avail if the deed were not duly registered. The same principle applies in certain classes of transactions where registration is optional. It is not necessary to go into all these details here. Chapter X of the Indian Registration Act of 1877 deals with this subject.

LECTURE XVIII.

Every man's house is his castle.

THE law considers that a man's house should give him such refuge from outside disturbance as a castle gives to a king from his enemies, and that it should also be his asylum of rest. Therefore it gives him certain privileges for offensive and defensive purposes, if he is disturbed in his house. For instance, if a thief comes to a man's house to rob or murder him and if the owner or his servant kills him in defence of himself or his property, it is no crime. Similarly if a person attempts to break into at night or burn a dwelling house, the owner can in defence cause any injury, even death, to the wrong-doer. For other minor offences against a dwelling house, the right of defence is restricted to such injury short of death as may be necessary for efficient defence. Sections 103 and 104 of the Indian Penal Code deal with this subject. I have dealt with this subject in another lecture also, so it is not necessary to say here more than that the word "house" is used in a generic sense and applies to a tent or vessel used for the purpose of living.

But the privileges which the owner has for offensive or defensive purposes or for repose are available

between subject and subject only. If a Police officer having authority to arrest, or a person having a warrant to arrest a man for an offence, appears before a man's house for the purpose of effecting the arrest, his house is no longer his castle. If he does not open it, the officer has power to effect a forcible entry. Similarly if the person having authority to arrest a man believes that he is in a house, the owner of the house is bound to open the door and afford him every reasonable facility. If he fails to do so, the officer has power to break open any outer or inner door or window of the house for the purpose of effecting the arrest. You must remember that before this extreme measure can be resorted to, the person effecting the arrest is bound to notify his authority and purpose, and to request the owner or an inmate of the house, if the former be not present, to open the door, and if the latter fails to do so, then only has he power to cause a forcible entry. But he is bound to give every reasonable facility to the *Purdá Nishin* women in the house to withdraw from their apartment if he intends entering it to make a search. These provisions are contained in Sections 47 and 48 of the Criminal Procedure Code.

But under the Civil Procedure Code the owner has more privileges. If a bailiff is ordered by a Civil Court to attach any moveable property in execution of a decree, he has no power to break open the outer door

of a dwelling house, even if the owner does not open it after he becomes aware of the presence of the bailiff. But if the bailiff has once gained access to a dwelling house, he can then break open the door of an inner room in which he has reason to believe that the property he has to attach will be found. But he cannot enter any dwelling house between sunset and sunrise. The privacy of the Zenana is as much respected under this Code as under the Criminal Procedure Code. These provisions are contained in Section 271 of the Civil Procedure Code.

It must be observed that a man's house is not a castle for any one but himself, and does not afford protection to a third party who flies thither, or to his goods, if brought or conveyed into a house to prevent a lawful execution and to escape the ordinary process of law. In these latter cases, therefore, the bailiff may, after request and denial, break open the door, or he may enter, if the door be open. It must be observed however that the bailiff does so at his peril. If it turns out that the defendant was not in the house, or had no property there, the bailiff is a trespasser. The judgment creditor who directs the bailiff to act in this illegal manner is responsible in damages for the trespass, even though he may have acted without any bad motive and mistakenly.

To sum up, a man's house is an asylum of repose and peace for himself and the members of his family. As between subject and subject, he cannot be disturbed

in it with impunity. He and his people can eject a trespasser and use such force as may be necessary to protect their personal and proprietary rights; as between the crown and the owner, the owner has restricted rights; as regards a stranger, (that is, not a *bona fide* inmate of the house), it is no castle at all.

LECTURE XIX.

The king is under no man and yet he is in subjection to God and to the law, for the law makes the king.

THIS maxim owes its existence to the peculiarities of the English constitutional law. I do not know of any exactly similar tradition in Hindu or Mahomedan law.

It is stated in the institutes of Manu that a king is superhuman because he is "formed of eternal particles drawn from the substance of Indra, Pavana, Yamá, Suryá, of Agni and Varuna, of Chandra and Cuvera.*" The institutes do not say "the law makes the king," yet his subjection to law and his responsibility to God for the proper administration of justice are admitted by Manu. He says "Let the king prepare a just compensation for the good and a just punishment for the bad; the rule of strict justice let him never transgress." He says in another place, "* *, let him (the king) obey the sacred law in his transactions with the people, and behave like a father towards all men." You will thus see that though according to Hindu law, the king is superhuman, yet he is not above law. Manu says "Where a common man would be fined one *kârshâpana*†

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*Indra is the god of rain, Yama of justice, Varuna of water, Cuvera of wealth.

†A copper-coin weighing eighty Ratis.

(for a crime) the king shall be fined one thousand, (for the same crime); that is the settled rule." This rule signifies that the king is more bound to obey the laws and not to break them than an ordinary man. He who demands obedience to the laws, must first obey them, for mere preaching without practice is useless. A Persian author has aptly expressed the danger of the violation by a king of the law of property. He says, if a king takes even half an egg from his subjects without paying for it, his servants will take away hundreds of hens from them. It implies that a slight disobedience of law on the part of the king will lead to disastrous results.

Both Islam and the Hindu religion clearly say that the king is personally responsible to God for the proper administration of justice. Manu says "Know that a king who heeds not the rules of the law, who is an atheist, and rapacious, who does not protect his subjects, but devours them, will sink low after death." They enjoin that where the king has not the required capacity to understand and administer the law personally, he is bound to appoint a learned and capable man well-versed in law for the purpose.

As regards this maxim, Mr. Broom, the author of Legal Maxims, makes the following remarks :—

"The person of a king is by law made up of two bodies; the natural body, subject to infancy, infirmity, sickness, and death; and a political body, perfect, power-

ful, and perpetual. These two bodies are inseparably united together, so that they may be distinguished, but cannot be divided. * * * As conservator of the public peace, the Crown in any criminal proceedings represents the community at large, prosecutes for the offence committed against the public, and can alone exercise the prerogative of pardoning. * * * *. The *case of Prohibitions* shows, however, that the king is not above the law, for he cannot in person assume to decide any case, civil or criminal, but must do so by his judges; the law being the golden met-wand and measure to try the causes of the subjects, and which protected his majesty in safety and peace,"—the king being thus, in truth, *sub deo et lege.*" (under god and the law).

The principles and rules laid down in this passage are to a certain extent foreign to our Indian Jurisprudence. The privileges mentioned therein could only be the birthright of an independent ruler. The Chiefs and Talukdars of Kathiawar are not independent rulers who could enjoy *all* these prerogatives. All the native Chiefs of India are in subordinate alliance with Her Most Gracious Majesty the Queen Empress, and are responsible to her for the proper administration of their States. If they fail in this, the British Government has undertaken the duty of interfering with the direct management of such Chiefs, in the interest of their subjects. H. H. Mulhar Rao, the late Gaekwar of Baroda, was deposed for mal-administration of his territory. In English history also we have parallel cases

wherein kings have been punished or deposed by law, for their high-handed policy and mal-administration.

The principles of Criminal Law referred to in the above quotation, though quite English in their origin, are now observed by all Native States. Criminal cases are now conducted in the name of the Darbar or the State, and on behalf of the public, in the same manner as in British India.

It will be convenient to refer here to another maxim of law having reference to the king. It is "The king never dies." It means that the theoretical king who is perfect and perpetual as stated above never dies. Manu says "The ruler of the Universe created a king for the maintenance of this system, both religious and civil, forming him of *eternal* particles drawn from the substance of Indra" and other gods. It is, hence, said that the king never dies in his political capacity, as the royal dignity should ever remain perpetual. This immortality is a canon of all systems of law, English, Hindu, and Islamic. Though an individual who is the king at one time, may die, yet the kingship he represented does not end thereby. The moment he expires, his successor is supposed to fill his place. There is no inter-regnum. The kingship could never be vacant. Somebody must be there in whose name law and order can be preserved and enforced. In certain Musalman States it is said that the successor is put on the Gadi before the remains of the deceased king are removed. In Hindu States, the coronation takes place soon after

the *Sutak* (period of impiety) is over. But still the successor is supposed to have assumed the office, the very next moment after the decease of the predecessor.

On this principle no king can be a minor. If the king be of tender years at the time of his succession, it is usual to appoint a regent to discharge the functions of royalty. Hence laws and grants made during such regency are binding alike on the subjects and the king.

LECTURE XX.

The King can do no wrong.

THIS maxim is essentially English in its origin and application. There is no similar maxim in Indian Jurisprudence to my knowledge. But it is often used, or rather misused, in Native States. One use that I have seen made of it, is to prove the immunity of a Chief from the consequences of the high-handed policy of the chief Officers of his State. It is sometimes argued that if a State is mismanaged by a Karbhari, the Chief is not responsible for it, for "The king can do no wrong," forgetting the duty of the Chief to supervise the general administration of his State.

The meaning of this maxim is not that however unjust the action of a king may be it cannot be called wrong, and that all he does is of course just and lawful, as is sometimes understood. I cannot do better than quote here what Mr. Broom, the learned author of "Legal Maxims," says as to its meaning. He says, "Its true meaning is, first, that the sovereign, individually and personally, and in his natural capacity, is independent of and is not amenable to any other earthly power or jurisdiction; and that whatever may be amiss in the condition of public affairs is not to be imputed to the king, so as to render him answerable for it personally to his people. Secondly, the above maxim

means, that the prerogative of the Crown extends *not* to do any injury, because, being created for the benefit of the people, it cannot be exerted to their prejudice, and it is therefore a fundamental general rule, that *the king cannot sanction any act forbidden by law*; so that, in this point of view, he is under and not above law, and is bound by it equally with his subjects. If, then, the sovereign personally command an unlawful act to be done, the offence of the instrument is not thereby indemnified; for though the king is not himself under the coercive power of the law, yet in many cases his commands are under the directive power of the law, which makes the act itself invalid, if unlawful, and so renders the instrument of execution thereof liable to punishment."

Thus you will see that the incapacity to do wrong is attributed not to his physical power to do wrong but to his theoretical perfection which renders him incapable of doing or thinking wrong. He is believed to be so perfect and so just that nothing wrong could emanate from him. This theory is strictly employed for the purpose of setting aside an unjust act of a king. For instance, if a king has been induced to invade the private rights of any of his subjects, for instance by making a grant prejudicial to the public or a private person, "the law will not suppose the king to have meant either an unwise or an injurious action, but declares that the king was deceived in his grant; and thereupon such grant becomes void upon the supposi-

tion of fraud and deception." In like manner grants made by a king are void, if they tend to prejudice the course of public justice. For instance if A be the heir to a private or charitable property, the king cannot set him aside in favour of B. In short, the king cannot exercise his supreme power to deprive the public or an individual of their vested rights, or to violate the established law to the prejudice of any.

Similarly, if the king makes a specific grant, out of special favour and of his own free will and in definite terms, it will, nevertheless, be void, if it appears to the Court that the king was deceived in the purpose and intent thereof, or if it be such that by law he could not make it. Nor can he create a new estate of inheritance or change the order of succession.

As regards private and public wrongs, the English law provides ample remedy. Mr. Blackstone says "whenever therefore it happens, that, by misinformation, or inadvertence, the Crown has been induced to invade the private rights of any of its subjects, though no action will be against the sovereign, yet the law has furnished the subject with a decent and respectful mode of removing that invasion, by informing the Crown of the true state of the matter in dispute; and, as it presumes that to *know* of any injury and to *redress* it are inseparable in the royal breast, it then issues as of course, in the sovereign's own name, his orders to his judges to do justice to the party aggrieved." Further

on he says " But injuries to the rights of *property* can scarcely be committed by the Crown without the intervention of its officers; for whom the law in matters of right entertains no respect or delicacy, but furnishes various methods of detecting the errors or misconduct of those agents, by whom the sovereign has been deceived, and induced to do a temporary injustice."

As regards public oppression, which a king could only commit through the instrumentality of ministers and other subordinate officers, the English law is more effective. It says " For, as a king cannot misuse his power without the advice of evil counsellors and the assistance of wicked ministers, these men may be examined and punished. The constitution has therefore provided, by means of indictments and parliamentary impeachments, that no man shall dare to assist the Crown in contradiction to the laws of the land; * * * Whenever the unconstitutional oppression, even of the sovereign power, advances with gigantic strides, and threatens desolation to a State, mankind will not be reasoned out of the feelings of humanity, nor will they sacrifice their liberty by a scrupulous adherence to those political maxims which were originally established to preserve it. * * *. When king James II invaded the fundamental constitution of the realm, the convention declared an abdication, whereby the throne was rendered vacant, which induced a new settlement of the Crown."

You will see from the passages quoted above, that this maxim owes its existence to the theory of perfection of the king and does not justify any wrong committed by a king or his ministers in his name. The king is practically as much under law as his subjects, while his ministers cannot shield themselves behind him for wrong done by them, even if they be done by his command.

LECTURE XXI.

He who derives the advantage ought also to bear the burden.

THIS maxim indicates a principle of universal application. Its fairness is self-evident. If you derive any benefit from a thing, you must also bear the liabilities attached to it. You cannot have, to quote a homely expression, "all plums and no stones."

If you engage a servant and derive the benefit of his services, you must also bear the burden of paying his wages. If the subjects of a king derive the benefits of law and order prevailing in his territory, they ought also to bear the burden of taxation which is the means of providing those benefits.

Similarly where a contract has been entered into by one man as agent for another, the person on whose behalf it has been made, cannot take the benefit of it without bearing its burden, that is without accepting the liabilities and burdens of the said contract. The contract must be performed in its integrity. The principal must accept the advantages and disadvantages of the contract entered into by his agent.

If a person wishes to adopt a contract which was entered into without his authority, he must do so in its entirety. He cannot ratify that part which is beneficial to himself, and reject the remainder. He must take

the benefit to be derived from the transaction with its burdens.

Similarly if A enters into a contract with B, who does not know or suspect that A is an agent of some one, and if this undisclosed principal requires B to perform the contract, he can only obtain such performance subject to the rights and obligations subsisting between the agent (A) and B.

Similarly the assignee of a "chose in action" takes it subject to all the equities to which it was liable in the hands of the assignor. "Chose in action" means a thing of which a man has not the possession or actual enjoyment, but which he has a right to demand by action, such as a debt, a bond etc. If A assigns his debt, say of Rs. 5000, owing from B to C, C takes it subject to all equities due from A to B. That is if A owed a counter debt of Rs. 3000 to B, C cannot demand from B Rs. 5000, but only Rs. 2000. This is so, because A himself could not have obtained from B more than Rs. 2000, so C who stands in the place of A cannot have a better right. You have already learnt the maxim that no man can transfer better rights than he himself has. The liability of an assignee is justified on the ground of that maxim also. This maxim is also applied in support and explanation of the law of estoppel. This law has been explained in a previous lecture. The person who makes a party believe that a certain state of things exists and derives benefit from the consequent act of that person, cannot fairly be

allowed to repudiate the burdens arising out of that state of things.

If we apply this maxim to the Chief or ruler of a State, we see that he is bound not to neglect the duties and responsibilities of his position. In fact the higher a man's position in life, the greater are his responsibilities. The duties and responsibilities of a ruler may be based on two grounds, one being that which we have considered, that as he enjoys the privileges and prerogatives of a ruler he is also bound to accept a ruler's burdens. The other reason is that the Chief is the leader of public education, civilization, and morality, and his example is followed by his subjects in many matters. The Gujrati proverb "યથા રાજા તથા પ્રજા" (as is the king, so are his subjects) eloquently expresses the influence which the king exerts over his people. There is thus a two-fold guilt attaching to a ruler who neglects the responsibilities and duties laid upon him by his position as the head of the State.

LECTURE XXII.

Let the principal be held responsible.

THIS maxim means that a master is responsible for the acts of his agent or servant. For instance, if an agent commits a tortious act, under the direction or with the consent of his principal, each is liable at the suit of the party injured ; the agent is liable because he did the wrong, and the principal is liable because he is a party to it, as it was done with his consent or direction.

In matters of civil injury the liability of the master or principal is wider still. There, he is liable even if he did not order the injury or was altogether ignorant of it. He is responsible because it is he who selected the doer of the injury as his servant or agent ; it is his orders that the agent was bound to receive and obey, and he alone could have removed him for misconduct. The principle upon which a master is in general liable to answer for the deeds of his servant is that the act of his servant is in truth his own act. If the master is himself driving his carriage, and from want of skill causes injury to a passerby, he is of course responsible for that want of skill. If, instead of driving the carriage with his own hands, he employes his servant to drive it, the servant is but an instrument set in motion by the master. It was the master's will that the servant should

drive, and whatever the servant does in order to give effect to his master's will may be treated by others as an act of the master, for the maxim of law is "He who does anything through the instrumentality of another is considered as doing it himself."

The general rule is that a master is responsible for all acts done by his servant in the course of his employment though without particular directions. The test applicable for determining the liability of the master being, "was the servant *in the employ* of the master at the time of committing the grievance? Was he authorized by his master to do the act complained of?"

"The master is liable even though the servant in the performance of his duty is guilty of a deviation or a failure to perform it in the strictest and most convenient manner. But where the servant, instead of doing that which he is employed to do, does something which he is *not* employed to do at all, the master cannot be said to do it by his servant, and therefore is not responsible for the negligence of the servant in doing it." If a servant commits a fraud in the course of his employment, the master is civilly liable for it.

I will give you a few illustrations of the liability of the master or principal.

If A employs B to do an illegal act and if C suffers some damage in consequence A is responsible to C for it.

If a stable proprietor hires a coachman and sends him out in charge of a carriage, he is responsible for an

injury sustained by a passerby or the occupants of the carriage, caused through the negligence or want of skill of the coachman.

If a game-keeper employed to kill game, carelessly fires at a hare so as to shoot a person passing on the highway, or if a workman employed by a builder in building a house negligently throws a stone or brick from a scaffold and so hurts a passerby, or if a servant driving his master's carriage along the road runs over a bystander, the master is responsible in all these cases for the injury.

This maxim is generally applied in civil cases. In criminal cases, the rule is that every one must answer for his own acts and must stand or fall on his own behaviour. If my servant goes and commits a murder, I am not responsible for it unless I abet it or am a party to it. It is a well-established distinction that while a man is civilly responsible for the acts of his agent *when acting within the established limits of his authority*, he will not be criminally responsible for such acts unless express authority is necessarily implied from the nature of the employment. Under ordinary circumstances, the authority of an agent is limited to that which is lawful. If in seeking to do the work, entrusted to him, he over-steps the law, he outruns his authority and his principal will not be bound by what he does.

If a Talukdar employs his Kamdar to fight out a case against another Talukdar, the Kamdar has autho-

rity to go to the Court and do everything usually done by suitors. But if he procures a forged document and uses it in the case, he over-steps the ordinary limits of his authority and so his master is not responsible for the crime committed by him. But if the master knowing that the document is forged, allows his Kamdar to use it, he is a participator in the crime.

LECTURE XXIII.

No cause of action arises from a bare agreement.

TO understand this maxim, it is first necessary to know what "contract" means. The Indian Contract Act defines contract as "an agreement enforceable by law," that is an agreement which law would recognise. While an agreement is defined as "Every promise and every set of promises, forming the consideration for each other." For instance, if A promises B to pay Rs. 300 for a particular horse, and B promises to part with the horse for that amount, it would be an agreement enforceable at law, that is, a contract. Here there are two reciprocal promises, viz. A's promise to pay Rs. 500 and B's promise to sell the horse for Rs. 500. Here the promise of A is in consideration for the promise of B and the promise of B is in consideration for the promise of A, that is, A promises to pay Rs. 500 because B promises to sell him a particular horse, and B promises to give A the horse because A undertakes to pay him Rs. 500; one depends on the other, and neither would have promised, if the other had not given his undertaking.

To come to the maxim, it means that where there is no consideration for a promise or undertaking, it (the promise) will not create a cause of action, that is, you cannot sue to have it enforced. A consideration

of some sort or other is necessary for the completion of a contract; a *Nudum pactum*, that is, an agreement to do or pay something on one side without any compensation on the other, will not support an action, and any one making such a promise cannot be compelled to perform it. Accordingly if one man simply promises to give another ₹s. 1000, there being no consideration moving from the promisee, it is not binding. A gratuitous promise or undertaking may indeed form the subject of a moral obligation, and may be binding in honour, but it does not create a legal responsibility. It is not unreasonable to assume that it was entered into improvidently or that the party to whom it was made has not sustained any serious injury from the neglect to observe it.

Therefore the general rule is that an agreement without consideration is void. But it has its exceptions, like every other rule. Section 25 of the Indian Contract Act deals with this point. It is as follows:—

An agreement made without consideration is void, unless.

(1). It is expressed in writing and registered under the law for the time being in force for the registration of assurances, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

(2). It is a promise to compensate, wholly or in part, a person who has already voluntarily

done something for the promisor, or something which the promisor was legally compellable to do ; or unless

(3). It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate ; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Consideration is of two kinds, executory and executed. If the promises of the promisor and promisee are to be carried out in future that is after the agreement is made, the consideration is said to be executory. But if the consideration for a promise is something already done or suffered for the promisor, it is said to be "executed" consideration.

The law requires not only that there should be a consideration for a contract but it also requires that the consideration should be lawful. Section 23 of the Indian Contract Act defines what lawful consideration means. It is as follows :—

> The consideration or object of an agreement is lawful, unless it is forbidden by law; or
>
> is of such a nature that, if permitted, it would defeat the provision of any law ; or
>
> is fraudulent ; or
>
> involves or implies injury to the person or property of another ; or
>
> the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful, is void.

Under this Section, agreements to divide profits acquired through fraud, or to divide rewards paid to commit a crime, are void ; so would be an agreement to pay for the commission of a crime, or for a wager, those being against public policy. Though these contracts may be for a consideration and though the promisee may have performed his part of the contract, yet as the consideration is unlawful the Court will not enforce them.

LECTURE XXIV.

He is not to be heard who alleges things contradictory to each other.

THIS maxim is obviously an elementary rule of logic and is frequently applied in Courts of law. Its equivalent in common parlance is, "A man shall not be permitted to blow hot and cold at the same time." It means that if a man makes two contradictory statements about the same transaction just as it suits his interest, he cannot be trusted and will not be heard. If statements once affirmed were allowed to be contradicted whenever the affirmant saw his opportunity, there would be no end of litigation and confusion. It is wise therefore to lay down rules by which a man may be prevented, *not* from saying the truth, but from saying that what he has once affirmed as truth, is false. This rule of law is intended to present the danger of insecurity which would arise from want of mutual confidence in the members of a constituted society. The legislature, perceiving how essential it is to the quick and easy transaction of business that every man should be able to put faith in the conduct and representations of his fellow, has laid down that the conduct and statements of an individual are binding on him in cases where mischief or injustice would be caused by their being revoked. This is the principle on which

If a grain merchant A has sold 500 maunds of rice out of a granary in which there are more than 500 maunds of rice and if B, without getting the quantity he has bought separated from the rest, sells it in small quantities to retail dealers with the tacit consent of A, the latter will not be allowed subsequently to deny B's title on the ground that as there was no specific appropriation of rice, no property has passed to him (B). Nor can an individual who has procured an act to be done sue as one of co-plaintiffs for the doing of that act. Similarly if a legatee elects to accept a beneficial condition of a will, he cannot subsequently repudiate its onerous conditions.

One condition of the rule of estoppel is, as you have learnt, that the opposite person must have been led into doing or refraining from doing a certain act, *in consequence* of the representation or conduct of the party. This condition has no application here. The maxim under consideration has, in one sense, a narrow scope. It deals with one individual only, and that is the person making two contradictory statements. It says no man shall be allowed to do that.

If a witness in Court makes two contradictory statements, his credibility is much lessened and he

exposes himself to a prosecution for perjury. It is not necessary according to the Indian Penal Code, that the two statements should be about a material point in the case. Any falsehood on oath amounts to perjury according to the Indian Penal Code.

NOW I have a word to say to you young men and boys of this College. If you will allow me to make to you a few personal observations, I would say this—Do not fritter away the time that you spend at this College. It is a very precious time, and believe me that you will rejoice later on for every moment here that you have spent well, and you will bitterly regret every moment that you have wasted. Make friends with each other, because the friends that you make here will be your friends in prosperity or adversity in after life. Do not regard the education you get in this College as a sort of State machinery provided by the Government in order to enable you either to pass Entrance Examinations at the University, or to obtain Government posts later on. There are a great many of you who will never obtain Government posts and who are not fitted to obtain them, and a larger number who will never take a University degree at all and are not required to take a University degree. The education you receive here is intended, for the most part, to qualify you to fill with distinction and honour the high stations in life to which your birth will naturally raise you when you leave this College. (Applause.) Now, as

I have just said, many of you young men and boys are of good birth and of high rank, and these are qualifications which obtain, and I hope that they will long continue to obtain, respect in a conservative country like India. But you have no right to be conceited or haughty because of your birth or rank. There is a certain honourable pride which a man may take in high birth, and which it is legitimate for him to feel only on one condition, that he is inspired thereby to dutiful ambitions. We have a motto in England which runs as follows, "*noblesse oblige*" and the meaning of that is that noble birth requires a man to be noble and to act nobly. It means that high rank carries with it duties as well as privileges, and that when you go forth into the world you must so comport yourselves as to be worthy of your position; otherwise you will forfeit first the confidence of your fellow countrymen and finally the position itself. (Applause.)

Next, I have a word to say to any Chiefs of the Punjab who may be here present, and if none are here to-day, it is possible that my words may reach them through the medium of the press. If they were here I would speak to them in the following terms. This Aitchison College has not been founded in our interests; it is not a device that has been constructed by the Government in order to bring either credit or advantage to the British Raj. It is an institution that has been founded in your interests, and in the interests of your families and your fortunes. You ought, therefore,

Chiefs of the Punjab, to give to this College greater support than you have hither-to done ; you ought, with scarcely an exception, to send your sons and grandsons and male relatives to this College ; and you ought to endeavour to turn it into that which was the ambition of its founders, namely, that it should be the Eton or the Harrow of the Punjab. (Applause.) Believe me, Chiefs, if you are here present, that the days are gone by when an hereditary aristoctacy, however noble its origin or however illustrious its service, can sit still with folded hands and contemplate the glories of its past. If you are to hold your own in the estates which you enjoy by virtue of your position and in the confidence of the people, you must come forth from your isolation, must grapple with the facts of life, and show that you are fitted by character and worth for the position which every one is ready to concede to you. You must march alongside of knowledge instead of toiling helplessly and feebly behind it ; you must reinforce the claims of your high birth by equally high attainments ; you must realise above all that destiny is not a passive influence that lies in the lap of the gods, but is an active instrument that is in your own hands to shape as you will. (Applause.)

Now, I have ventured to give these words of advice to the boys and young Princes and nobles of this College, and also to a wider circle of the Chiefs of the Punjab outside. May I be allowed to say that I have done so in no spirit of censorship, or dictation, or command. I have spoken to you both because I am a

student interested in the manly and splendid traditions of this famous province of the Indian empire (applause); because as Viceroy I have a claim to the support of every man in this country in my efforts to make India prosperous and strong; and because as your friend I desire that in future generations and in an era of peace you should retain, not by rank alone but by pre-eminence of influence and character and worth, the position which you won for yourselves in the more stormy days of old. (Loud and continued applause.)

Extract from a speech delivered by Colonel J. M. Hunter, Political Agent Kathiawar, at the installation of the Ráj Síhéb Amarsinhji, Chief of Wánkáner, on the 18th March 1899.

REMEMBER that every advantage we possess brings with it a corresponding obligation. The more careful your education and training the more will be expected of you. The more numerous your friends the fiercer the light that will beat upon your throne. Your success will be their joy, your failure will cause pain to all those who have assisted and watched over your education and training.

Cultivate self study, self respect, self control. Be careful in the choice of your associates. It has been truly said "show me a man's friends and I will tell you what he is." Do not dismiss or dispise old servants of the State, because their ways may be old fashioned. They will do you more faithful service than new comers.

Send all flatterers and sycophants about their business, but promote an official who has the courage to differ from you. In your choice of officials select those who have a reputation to lose. Be slow to form an opinion, but having once, after due deliberation, adopted a course, do not be easily deflected from it. This is firmness but adherence to a mistaken course lightly chosen is obstinacy.

Be accessible at all times and to all classes. You will thus inspire confidence in your subjects and put a stop to the nefarious proceedings which unprincipled officials are prone to indulge in when they think they have the exclusive ear of their master.

ERRATA

PAGE.	LINE.	INCORRECT.	CORRECT.
24	23	Therefore.	There for.
36	1	Maxims.	Maxim.
38	7	nigbt.	night.
43	8	immoveable.	immovable.
43	9	moveable.	movable.
44	5	inflamable.	inflammable.
52	7	moveable.	movable.
52	9	immoveable.	immovable.
54	23	moveable.	movable.
63	7	Cuvera.	Kuber.
67	1	Impiety.	Impurity.